



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NOS.

WR-79,629-01, WR-79,629-02, WR-79,629-03,
WR-79,629-04, AND WR-79,629-05

EX PARTE MARSHALL RAY ARMSTRONG, Applicant

ON APPLICATIONS FOR WRITS OF HABEAS CORPUS
CAUSE NOS. W00-29391-U(A), W00-29394-U(A), W00-29410-U(A),
W00-29413-U(A), AND W99-29711-U(A)
IN THE 291ST DISTRICT COURT FROM DALLAS COUNTY

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court these applications for writs of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of two offenses of aggravated sexual assault of a child, one offense of sexual assault of a child, and two offenses of indecency with a child by contact. He was sentenced to life in prison for both aggravated sexual assaults, life in prison for sexual assault, and twenty years in prison for both indecencies by contact. According to the writ records, stacking orders were entered for two of the judgments.

Applicant contends that the separate indictments for each offense were wrongly joined into a single trial and that the stacking orders were not authorized by statute. He also contends that his life sentence for the sexual assault conviction is above the maximum penalty of twenty years in prison and constitutes an unlawful sentence.

Regarding the unlawful sentence claim for the sexual assault conviction, Applicant has alleged facts that, if true, might entitle him to relief. It does not appear from the record provided to this Court that the indictment contained an enhancement paragraph, and the judgment, which does not indicate a plea or finding for an enhancement, states the offense is a second-degree felony, which has a punishment range of two to twenty years, but the judge assessed a life sentence.

In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall resolve the disputed facts regarding the enhancement of punishment for Applicant's sexual assault conviction and shall provide this Court with further information regarding the merits of his unlawful sentence claim for this conviction. To do so, the trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d). In the appropriate case, the trial court may rely on its personal recollection. *Id.* If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law regarding whether the life sentence assessed for the sexual assault conviction is an unlawful sentence. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's other claims for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: June 12, 2013

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